

Application No. 10/749,368  
Response dated July 18, 2007  
Reply to Office Action of April 23, 2007

### **REMARKS**

Claims 1–64 are presented for Examiner Hill's consideration.

Claims 1, 22, 43, and 64 have been amended to further clarify that the fasteners in the front waist region engage directly into the elastic inner layer in the back waist region and the fasteners in the back waist region engage directly into the outer surface of the outer layer in the front waist region. Support for this amendment can be found at least at page 21, lines 23-27 and Figures 3-4. No new matter has been added.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following arguments is respectfully requested.

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### **ARGUMENTS**

By way of the Office Action mailed April 23, 2007, claims 1-3, 5, 8-10, 13-14, 17, 19-24, 26, 29-31, 34-35, 38-47, 50-52, 55-56, and 59-61 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Application Number 2002/0072726 to Mishima et al. (hereinafter "Mishima") in view of U.S. Patent Number 4,869,724 to Scripps (hereinafter "Scripps"). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143. If one or more of the criteria are missing, the Examiner has failed to establish a *prima facie* case of obviousness and the rejection should be withdrawn.

#### **The combination of *Mishima* and *Scripps* does not teach or suggest all the claim limitations.**

Applicants' claims 1, 22, 43, and 64 have been amended to further require that the fasteners in the front waist region engage **directly** into the elastic inner layer in the back waist region and the fasteners in the back waist region engage **directly** into the outer surface of the outer layer in the front waist region. The combination of *Mishima* and *Scripps* does not teach or suggest these limitations. Fastener 12 of *Mishima* does not engage **directly** into the elastic inner layer as now required by Applicants' claims. Instead, fastener 12 engages with fastener 11 which is **not** directly into the elastic inner layer as required by the claims. Likewise, fastener 11 engages with fastener 12 which is **not** directly into the outer layer as required by the claims. The addition of *Scripps* does not cure this defect.

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Thus, Applicants respectfully request that the rejections of claims 1, 22, 43, 64, and those claims depending therefrom be withdrawn for at least this reason.

Further, with regard to claims 3 and 24, Scripps does not disclose an extensible backsheet 30 as asserted by the Examiner on page 6 of the Office Action. Instead, column 5, lines 53-66 disclose that the backsheet 30 of Scripps is "flexible" which "refers to materials which are compliant and which will readily conform to the general shape and contours of the human body." Scripps is silent as to extensibility. The two terms are not necessarily synonymous.

With regard to claim 43, Scripps does not disclose front ear/panel 51 bonded in the front waist region 50 as asserted by the Examiner. In contrast, front ear/panel 51 of Scripps is a portion of the front waist region, not a separate portion bonded to the front waist region.

Thus, Applicants respectfully request that the rejections of claims 3, 24, and 43 be withdrawn for at least these additional reasons.

**By way of the Office Action mailed April 23, 2007, claims 4, 6, 11, 15-16, 18, 25, 27, 32, 36-37, 48, 53, and 57-58 stand rejected under 35 U.S.C. § 103 as allegedly being obvious over *Mishima* in view of *Scripps* and further in view of U.S. Patent Number 4,990,147 to Freeland (hereinafter "Freeland"). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.**

As discussed above, the combination of *Mishima* and *Scripps* does not teach or suggest that the fasteners in the front waist region are adapted to engage directly into the elastic inner layer in the back waist region or the fasteners in the back waist region are adapted to engage directly into the outer surface of the outer layer in the front waist region. The addition of Freeland does not cure this defect. Thus, claims 1, 22, 43, 64, and those claims depending therefrom are patentably distinct over the combination of *Mishima*, *Scripps*, and Freeland for at least this reason. Applicants respectfully request that the rejection as to these claims be withdrawn.

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**By way of the Office Action mailed April 23, 2007, claims 12, 33, 54, and 64 stand rejected under 35 U.S.C. § 103 as allegedly being obvious over *Mishima, Scripps, Freeland* and further in view of U.S. Patent 4,895,569 to Wilson et al. (hereinafter "Wilson"). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.**

As discussed above, the combination of Mishima, Scripps, and Freeland does not teach or suggest that the fasteners in the front waist region are adapted to engage directly into the elastic inner layer in the back waist region or the fasteners in the back waist region are adapted to engage directly into the outer surface of the outer layer in the front waist region. The addition of Wilson does not cure this defect. Thus, claims 1, 22, 43, 64, and those claims depending therefrom are patentably distinct over the combination of Mishima, Scripps, Freeland, and Wilson for at least this reason. Applicants respectfully request that the rejection as to these claims be withdrawn.

**By way of the Office Action mailed April 23, 2007, claims 7, 28, and 49 stand rejected under 35 U.S.C. § 103 as allegedly being obvious over *Mishima* and *Scripps* and further in view of U.S. Patent 5,690,627 to Clear et al. (hereinafter "Clear"). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.**

As discussed above, the combination of Mishima and Scripps does not teach or suggest that the fasteners in the front waist region are adapted to engage directly into the elastic inner layer in the back waist region or the fasteners in the back waist region are adapted to engage directly into the outer surface of the outer layer in the front waist region. The addition of Clear does not cure this defect. Thus, claims 1, 22, 43, 64, and those claims depending therefrom are patentably distinct over the combination of Mishima, Scripps, and Freeland for at least this reason. Applicants respectfully request that the rejection as to these claims be withdrawn.

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For at least the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at (920) 721-3016.

Respectfully submitted,

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